83-1717

Office - Supreme Court, U.S.
FILED
APR 21 1984
ALEXANDER L. STEVAS
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ALABAMA SURFACE MINING RECLAMATION COMMISSION,

Petitioner

v.

COMMERCIAL STANDARD INSURANCE COMPANY,

Respondent

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI

TO THE ALABAMA SUPREME COURT

CHARLES A. GRADDICK
ATTORNEY GENERAL OF
ALABAMA

ROSA H. DAVIS
ASSISTANT ATTORNEY
GENERAL OF ALABAMA

Counsel of Record

P. O. Box 2390
Jasper, Alabama
35502-2390

ATTORNEYS FOR PETITIONER

TABLE OF APPENDICES

App. No.	Pg. No.	Description
A	1a	January 27, 1984 Alabama Supreme Court Order (Denying Petition for Certiorari)
B	2a	October 19, 1983 Alabama Court of Civil Appeals Order (Denying Application for rehearing)
C	3a	September 14, 1983 Alabama Court of Civil Appeals (Appeals Opinion)
D	17a	Tuscaloosa County Circuit Court (Order)
E	24a	Alabama Surface Mining Reclamation Commission (Findings and Order)
F	31a	Text of statutes cited

APPENDIX A

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1983-84

RE: 83-150

EX PARTE: ALABAMA SURFACE MINING RECLAMATION COMMISSION

RE: COMMERCIAL STANDARD INSURANCE COMPANY

VS.

ALABAMA SURFACE MINING RECLAMATION COMMISSION

Petition for Writ of Certiorari denied. No opinion. January 27, 1984

ADAMS, J. TORBERT, C.J., FAULKNER, ALMON & EMBRY, J. J., CONCUR.

Robert G. Esdale, Clerk
Supreme Court of Alabama

APPENDIX B

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

OCTOBER TERM, 1983-84

RE: CIV. 3806

RE: COMMERCIAL STANDARD INSURANCE COMPANY

VS.

ALABAMA SURFACE MINING RECLAMATION COMMISSION

Application for rehearing overruled. No opinion on rehearing. October 19, 1983.

John H. Wilkerson, Jr., Clerk, Court of Civil Appeals of Alabama

John H. Wilkerson, Jr.
Clerk, Court of Civil
Appeals of Alabama

APPENDIX C

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

OCTOBER TERM 1983-84

RE: CIV. 3806

RE: COMMERCIAL STANDARD INSURANCE COMPANY

VS.

ALABAMA SURFACE MINING RECLAMATION COMMISSION

SEPTEMBER 14, 1983

Wright, Presiding Judge

This is an action under the Alabama Surface Mining Reclamation Act of 1975, appealed from the Circuit Court of Tuscaloosa County, Alabama.

On January 12, 1981, verified complaints were filed with the Alabama Surface Mining Reclamation Commission

(herein the Commission) against Hendrix & Lee, Inc. (herein Hendrix), a company which had previously been engaged in surface mining in Tuscaloosa County, Alabama. The complaints alleged violations of the Alabama Surface Mining Reclamation Act of 1975 by Hendrix.

A hearing was held January 27, 1981, by a hearing examiner. Notice of the hearing was sent to appellant, Commercial Standard Insurance Company (herein Commercial), the surety on the reclamation bonds of Hendrix for the affected mined area. Commercial appeared by counsel at the hearing.

No one appeared at the hearing on behalf of Hendrix which, prior to the issuance of the complaint, had filed a Chapter 7 petition in bankruptcy court. No testimony was taken at the hearing as

the examiner determined that all the facts delineated in the verified complaints were admitted by Hendrix, due to its failure to appear.

Counsel for Commercial requested the right to present evidence, subpoena witnesses, and cross examine the inspectors who filed the complaint. That request was denied. However, the examiner allowed Commercial to object on the record that its constitutional rights to due process and equal protection were being violated, and that the examiner had no jurisdiction under §9-16-15(a), Code of Alabama 1975.

Subsequently, the examiner issued an order stating that Hendrix, or any other party with an interest, should submit a reclamation timetable to the Commission. Failing to receive any

timetables, the Commission ordered the forfeiture of the surety bonds.

Commercial appealed the order to the Jefferson County Circuit Court, pursuant to §9-16-51(b), Code of Alabama 1975. The case was transferred to Tuscaloosa County Circuit Court. In April 1983, the Circuit Court of Tuscaloosa County, after hearing, entered judgment in favor of the Commission. Commercial appealed.

Three issues were raised on appeal: (1) lack of proper jurisdiction under §9-16-51(a), Code 1975, (2) release of surety due to a material alteration of the original obligation, and (3) deprivation of Commercial's federal constitutional rights of due process and equal protection when not allowed to participate in the hearing before the Commission.

In resolving the jurisdictional issue it should be noted that the Alabama Surface Mining Reclamation Act of 1975 has been repealed by Act No. 81-435, Acts of Alabama 1981, §38. The 1975 act is applicable in this case, however, because it was in effect at the time the cause of action occurred.

Section 9-16-51(a) states in pertinent part that, "Complaints alleging a violation of the articles or rules or regulations of the Commission must, as a jurisdictional matter, be filed with the Commission within 90 days of the event or events giving rise to such complaint". This court has already held the section required as a jurisdictional matter that a verified complaint must be filed within ninety days. Alabama Surface Mining Reclamation Commission v.

Jolly, 373 So. 2d 855 (Ala. Civ. App. 1979).

The essential language in dispute is the meaning of "event or events" which would activate the jurisdiction of the Commission to hear a complaint. In construing a statute several rules of construction are applicable. The court is to ascertain and give effect to the legislature's intent as expressed from the words of the statute. State v. Steel City Crane Rental, Inc., 345 So. 2d 1371 (Ala. Civ. App. 1977). A reasonable construction is to be given as opposed to a repressive or inconvenient one. League of Women Voters v. Renfro, 292 Ala. 128, 290 So. 2d 167 (1974). A statute must be considered in its entirety, and every word in it should be made effectual where possible. Alabama State

Board of Health ex rel Baxley v. Chambers County, Alabama, 335 So. 2d 653 (1976). Morever, a statute susceptible to either of two opposing interpretations must be read in the manner which effectuates rather than frustrates the major purpose of the legislative draftsman. Shapiro v. United States, 335 U.S. 1 (1948).

The legislative intent is to provide for the safe, responsible and reasonable reclamation of lands which have been surface mined. §9-16-32(a), Code 1975. The legislature has delineated several objectives of this legislation, one of which is to ensure the prompt reclamation of mined surfaces. §9-16-32(i)(3) Code of Alabama 1975.

Two different interpretations of the language "event or events" are offered by the parties, neither of which is

satisfactory. Commercial urges this court to construe the phrase as meaning a single act which would start the ninety day period running. Under Commercial's interpretation if reclamation has not commenced within six months of the date mining began, the ninety-day period for filing a complaint begins to run. To adopt Commercial's interpretation would be unreasonable when applied to continuing and repeated violations and an extended period of operation. See League of Women Voters v. Renfroe, 292 Ala. 128, 290 So. 2d 167 (1976).

The Commission, on the other hand, submits that the failure to reclaim the land is a continuing act which does not abate until the land is properly reclaimed and that a complaint is timely filed if done within ninety days of any day in

which the land or any part thereof remains unreclaimed. To adopt the Commission's interpretation would nullify and eliminate the limitation provision entirely. There would be a diminished incentive to press for early reclamation. There would be no end to the surety's obligation under the bond. To remove a time limit for enforcing reclamation is to encourage delay of reclamation.

While a mining operation is ongoing, the probability of reclamation is likely to be greater because of a present financial ability of the operator to finance reclamation. The incentive and the means to reclaim are likely to decline once the coal is removed and equipment moved to other and more profitable operations. A direct and tangible risk in the Commission's interpretation is

the longer the land lies unreclaimed, the greater the probability of soil erosion and increased expenses for the ultimate reclamation. To permit the authority of the Commission to hear a complaint to extend over an unlimited time is to unreasonably frustrate the legislative intent of prompt reclamation of land.

Section 9-16-39(g) states that contouring of all affected land is to be completed "within six months from the date of the completion of operations", unless prevented by an act of God or otherwise extended by the director for reasonable cause. The ninety-day period thereafter is a limitation on filing a complaint for failing to complete contouring. Thus, in order to give a reasonable interpretation to the statute and effectuate the legislative intent,

we interpret the statutory words "event or events" found in Section 9-61-51(a) as meaning that except for an act of God or extension by the director, the outer limitation for filing a complaint would be nine months after the completion of mining operations.

Though the record does not reveal the exact date mining operations ceased, it was stipulated that the Commission had been aware of Hendrix' failure to timely reclaim the land for as long as fourteen months before the complaint was filed. It was further stipulated that Hendrix was in violation of §9-17-39, for a period substantially in excess of ninety days prior to the filing of the complaint. It thus appears that a timely complaint was not filed. Therefore no jurisdiction existed in the Commission,

under the statute, to hear the complaint against Hendrix. The crucial question is whether Commercial, as surety, may claim the benefit of its principal's defense to the complaint before the Commission.

Under Alabama law, a surety may make any defense not personal to the principal, that the principal can. United States Fidelity & Guaranty Co. v. Town of Dothan, 174 Ala. 480, 56 So. 953 (1911). Specifically, a surety may assert as a defense the statute of limitations available to the principal, State v. Bi-States Construction Co., 269 N. W. 2d 455 (Iowa 1978), even if the principal through negligence, inadvertence, collusion, or otherwise, has not raised it. United States v. Frankini Construction Co., 139 F. Supp. 153 (D. Mass. 1956). See also, 72 C.J.S. Principal and Surety §255 (1951).

Thus, in this case, the surety, Commercial, could claim the benefit of Hendrix' defense of the lack of jurisdiction in the Commission to entertain the complaint against it.

We find the Commission erred in denying Commercial the right to appear and defend in place of its defaulting principal. The circuit court erred in entering judgment in favor of the Commission and by holding therein that failure to reclaim is a continuing violation with no limitation upon the filing of a complaint and hearing thereon by the Commission. For want of jurisdiction in the Commission, its orders herein are void and to no effect. Commercial is due to be discharged from its obligation as surety in the instances complained of.

In view of the issue of jurisdiction

being dispositive, we pretermit discussion of other issues presented.

REVERSED AND REMANDED WITH DIRECTION.

BRADLEY and HOLMES, JJ., Concur.

APPENDIX D

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

TUSCALOOSA COUNTY CIRCUIT COURT

RE: CIV 81-5074

RE: COMMERCIAL STANDARD INSURANCE COMPANY

VS.

ALABAMA SURFACE MINING RECLAMATION COMMISSION

APRIL 5, 1983

This cause coming on to be heard, on appeal from the Alabama Surface Mining Reclamation Commission (now the Alabama Surface Mining Commission), pursuant to §9-16-51, Code of Alabama 1975, and was submitted to the Court on the pleadings,

exhibits, stipulation of facts, and memorandum briefs of both parties.

The Court having considered the pleadings, exhibits, stipulation of facts, brief of the parties and the applicable law, makes the following findings and conclusions of law:

1. The Court finds and the Legislature of Alabama has declared, that it is the public policy of this State that all areas surface mined must be reclaimed and that lands subjected to coal surface mining and not reclaimed constitute a peril to the natural resources, economic well-being of the State and a hazard to the health and safety of the people of this State.

2. The Court finds that the provisions of the Alabama Surface Mining Reclamation Act of 1975, must be construed

so as to give effect to the aforesaid declaration of public policy and legislature intent.

3. The Court finds and holds that a failure to reclaim lands affected by coal surface mining is a violation of the Alabama Surface Mining Reclamation Act of 1975, and that this violation is continuous in nature, i.e., the violation exists until the land is reclaimed to the standards required by law. To hold otherwise would be to defeat the manifest intentions of the legislature.

4. The Court finds and holds that the verified complaints in this case were timely filed with the Defendant Commission and sufficient to invoke its jurisdiction to hold administrative hearings and enter appropriate orders to bring the mine operator into compliance with

the provisions of the Alabama Surface Mining Reclamation Act of 1975.

5. The Court finds and holds that there were no violations of due process in the hearings before the Defendant Commission or in the order of the Defendant Commission in declaring Plaintiff's surety bonds forfeited and payable into the Alabama Surface Mining Reclamation Fund.

6. The Court finds and holds that the orders of the Commission, requiring Plaintiff to either perform in its principal's place or to pay the funds due under its surety bond, although not a judicial determination of forfeiture, and of no force or effect as a judicial forfeiture, are sufficient demands on the surety to perform its obligations, and is reasonable and lawful under the cir-

cumstances presented, and supported by a clear preponderance of the evidence.

7. The Court finds and holds that Plaintiff is obligated unto the State of Alabama as per the terms of its surety agreement, and that Plaintiff may either perform in the place of its principal or pay the sums due under its bond.

8. The Court finds that the Plaintiff is not entitled to the relief prayed for.

Accordingly, it is CONSIDERED, ORDERED, ADJUDGED and DECREED BY THE COURT:

1. The judgment be and is hereby entered in favor of the Defendant and against Plaintiff.

2. That the orders of the Alabama Surface Mining Reclamation Commission requiring Plaintiff to pay sums due under

bond are reasonable and lawful and supported by a clear preponderance of the evidence and Plaintiff is ordered to comply with the orders of the Commission.

3. That costs accrued herein be and are hereby taxed against Plaintiff, and if not paid let execution issue, and if execution is returned not found, then costs are taxed against Defendant.

4. That the Clerk shall cause a copy of this order to be delivered to the parties by placing a copy of same in the United States Mail, to the attorneys of record.

DONE and ORDERED, this the 5th day of April, 1983.

I, Doris T. Turner, Clerk, Circuit Court Registry Division, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said

Court.
Witness my hand this the 5th day of April, 1983.

/s/ Doris T. Turner
Clerk, Circuit Court of Tuscaloosa County, Alabama

APPENDIX E

BEFORE THE ALABAMA SURFACE

MINING RECLAMATION COMMISSION

MARCH 12, 1981

Frank Evans, Inspector
for the State of Alabama,

Complainant

v. No: F 81-030,
F 81-032,
Hendrix and Lee, Inc., F 81-033,
Eddie Hendrix, as Presi- F 81-034,
dent and Responsible Officer F 81-035
and John C. Coggins, III,
as Designated Agent for
Service,

Respondents

Pursuant to the provisions of the Alabama Surface Mining Reclamation Act of 1975, a public hearing in the above-styled cause was held on February 25, 1981, before the Honorable Virgil Willett, Director of the Commission and acting Hearing Examiner. The Commission was

represented by Marlin V. MacLaughlin, Jr., Assistant Attorney General. The Respondents were not represented though duly served and notified by Ronald J. F. Reeves, Assistant Attorney General, January 27, 1981. At that time, Mr. Eddie Hendrix was in the office of the Alabama Surface Mining Reclamation Commission and acknowledged that he had knowledge of the various Hendrix and Lee cases. At that time he further stated that he was attempting to work the problem of untimely reclamation out with the Receiver in Bankruptcy. Relying on the evidence as shown in the official transcript of this hearing, the Commission hereby FINDS:

It is noted that proper service of notice is verified, the Citation and Order with attached Verified Complaint

having been mailed and the Respondent, Eddie Hendrix, having been in the office of the Commission and acknowledged the Dockets before Ronald J. F. Reeves, Assistant Attorney General, January 27, 1981. The Respondent has failed to appear or be represented as ORDERED. A representative of the surety company, Commercial Standard Insurance Company, being, Thomas Stewart, Attorney, was present at the hearing. Relying on the allegations contained in the Citation and Order as represented by the attached Verified Complaint for which there is no dispute, namely, lack of timely reclamation and in consideration of the apparent Bankrupt status of Hendrix and Lee, Inc., on acreage disturbed or affected under Permit P-1899, P-1867, P-1898, P-2020, P-1753, the following ORDER is issued:

O R D E R

It is hereby ORDERED that Hendrix and Lee, Inc., or any other party with an interest, submit or cause to be submitted a reclamation timetable in writing acceptable to the Commission addressing the specific steps to be taken to completely reclaim the acreage affected under permits P-1899, P-1867, P-1898, P-2020, and P-1753, including grading, contouring, soil testing, the addition of appropriate soil amendments and seeding so that complete reclamation shall be accomplished by May 15, 1982, exclusive of the two (2) necessary growing seasons within which to establish permanent vegetative cover. Said reclamation timetable shall be due within sixty (60) days of the date of this ORDER. Failure to receive a satisfactory

reclamation timetable within sixty (60) days of the date of this ORDER as outlined above, the applicable bonds, be it a corporate surety bond or in the form of other securities, are deemed FORFEITED the sixty-first (61st) day following the date of this ORDER. However, where a corporate surety bond is involved, the surety may submit or cause to be submitted the required reclamation timetable in writing satisfactory to the Commission outlining the specific steps to be taken to achieve complete reclamation exclusive of the necessary two (2) growing seasons for the establishment of permanent vegetative cover, no later than May 31, 1982. Said surety shall have an additional thirty (30) days within which to submit the required reclamation timetable. Failure by Hendrix and Lee, Inc.,

any party in interest or the corporate surety to submit the required reclamation timetable within ninety (90) days of the date of this ORDER, the applicable bonds on permits P-1899, P-1867, P-1898, P-2020, P-1753 are immediately FORFEITED and the funds thereunder DUE and PAYABLE on the ninety-first (91st) day from the date of this ORDER into the Alabama Surface Mining Reclamation Fund for the reclamation of the affected acreage under Permits P-1899, P-1867, P-1898, P-2020, P-1753.

It is further ORDERED that based upon the Bankrupt status of Hendrix and Lee, Inc., and upon the presumed inability to perform the obligations under State Law and Regulations and due to the continued failure to comply with previous Notices of Violations and Orders of this Commission, the license of Hendrix and

Lee, Inc., being L-237, is immediately REVOKED.

ORDERED BY THE COMMISSION, this the 12th day of March, 1981.

ATTEST: A true copy

/s/ Virgil Willett
Virgil Willett,
Director for the
Commission

The above is a consolidation of the five administrative orders issued in the case. The orders are identical except for the reference to permit numbers and administrative docket numbers.

APPENDIX F

STATUTES INVOLVED

Ala. Code §9-16-31:

The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:... "Operator" means the person, firm, corporation, partnership or any other entity conducting coal surface mining.

Ala. Code §9-16-32(a):

The objective of this Act is to provide for the safe, responsible and reasonable reclamation of lands upon which surface disturbances will be created by surface mining of coal so as to protect the taxable value of property and preserve natural resources within the State and to protect and promote

the health and safety of the people of this State consistent with the protection of property and with maximum employment and the economic and industrial well-being of the State. The Legislature finds and declares that the extraction of coal by surface mining provides a major present and future source of energy and is an essential and necessary activity which contributes to the economic and material well-being of the State. Ala. Code §9-16-34(23)(a):

In addition to any other powers conferred on it by law, the Commission shall have the power to:.... Enforce the provisions of section 502 of the federal Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) and Parts 700.5, 710.5, 710.11, 710.12, 715-718 of the Interim Surface Mining

Regulations promulgated thereunder, and any subsequent amendments or revisions to said regulations.

Ala. Code §9-16-39(g):

Regrading shall begin within six (6) months after the beginning of operations, unless such regrading is prevented by act of God such as unseasonable weather or labor disputes or unless otherwise extended by the Director for reasonable cause, provided however that in those operations where the mining method utilized would result in the placing of over-burden on regraded areas, such regrading shall be commenced as soon as practicable compatible with such mining method, provided further that the applicant shall complete the contouring of all affected land within six (6) months from the date of the completion of

operations, unless such regrading is prevented by act of God such as unseasonable weather or labor disputes or unless otherwise extended by the Director for reasonable cause.

Ala. Code §9-16-44(a), (b):

After a coal surface mining permit application has been approved but before such a permit is issued, the applicant shall file with the Commission, on a form prescribed and furnished by the Commission, a bond for performance payable to the State, and conditioned upon faithful performance of all the requirements of this Act and the coal surface mining permit. The bond shall cover the to be affected area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the

initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the Commission an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall be One Thousand Two Hundred ($1,200.00) Dollars, per acre to be bonded, but in no case shall the bond be less than Ten Thousand ($10,000.00) Dollars per permit.

Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements as provided in this Act. Upon successful revegetation and acceptance by

the Commission, the operator's responsibility shall completely terminate and the remaining portion of bond released.

Ala. Code §9-16-51(a):

Whenever a verified complaint is filed with the Commission, alleging that any operator is in violation of this Act, or rules and regulations of the Commission, the Commission may cause to have issued and served upon the person alleged to be committing such violation a written notice which shall specify the provision of this Act and/or the rules and regulations of the Commission which such operator allegedly is violating, and a statement of the manner in, and the extent to which said operator is alleged to violate this Act and/or the rules and regulations of the Commission, and shall require the person so complained against to answer

the charges of such formal complaint at a hearing before the Commission at a time not less than ten (10) days or more than thirty (30) days after the service of notice. At the request of the Commission or of the charged operator, the Director shall issue subpoenas requiring the attendance of witnesses and the production of such evidence as may be relevant to such hearing. The charged operator may appear in person or by counsel at such hearing. Testimony shall be taken under oath and recorded stenographically at such hearing and the charged operator shall have the right to cross-examine witnesses at such hearing. A copy of the record of such hearing shall be furnished to the charged operator upon payment of the cost of such copy. The Commission shall enter such order as

it deems appropriate on the basis of the facts presented, which order may include a civil penalty of not more than $10,000 based on the severity of the offense or offenses found in such order. The Commission shall forthwith mail a copy thereof to the charged operator or its attorney of record. If such order of the Commission is not complied with, the Commission may commence proceedings under Section 17 of this Act. The filing of a verified complaint alleging a violation of this Act, or rules or regulations of the Commission, shall be deemed to include all identical occurences of the offense alleged and no further complaint relating to such offense may be filed pending the final resolution of such complaint pursuant to this section. Complaints alleging a violation of the

Act, rules or regulations of the Commission must as a jurisdictional matter be filed within ninety (90) days of the event or events giving rise to such complaint. 28 U.S.C. §1257 (3):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:..... By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States.

30 U.S.C. §1201:

The Congress finds and declares that ----

(a) extraction of coal and other minerals from the earth can be accomplished by various methods of mining, including surface mining;

(b) coal mining operations presently contribute significantly to the Nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of the Nation's coal reserves can only be extracted by underground mining methods, and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry;

(c) many surface mining operations

result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property (,) by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(d) the expansion of coal mining to meet the Nation's energy needs makes even more urgent the establishment of appro-

priate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public;

(e) surface mining and reclamation technology are now developed so that effective and reasonable regulation of surface coal mining operations by the States and by the Federal Government in accordance with the requirements of this Act is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations;

(f) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing

regulations for surface mining and reclamation operations subject to this Act should rest with the States;

(g) surface mining and reclamation standards are essential in order to insure that competition in interstate commerce among sellers of coal produced in different States will not be used to undermine the ability of the several States to improve and maintain adequate standards on coal mining operations within their borders;

(h) there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal [mining operations] on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and

adjoining areas as well as continuing to impair environmental quality;

(i) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to serve as a basis for effective and reasonable regulation of such operations;

(j) surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner; and

(k) the cooperative effort established by this Act is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations.

30 U.S.C. §1202:

It is the purpose of this Act to --

(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations;

(b) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations;

(c) assure that surface mining operations are not conducted where reclamation as required by this Act is not feasible;

(d) assure that surface coal mining operations are so conducted as to protect the environment;

(e) assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with

the surface coal mining operations;

(f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy;

(g) assist the States in developing and implementing a program to achieve the purposes of this Act;

(h) promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this Act [enacted Aug. 3, 1977] and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public;

(i) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act;

(j) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals;

(k) encourage the full utilization of coal resources through the development and application of underground extraction technologies;

(l) stimulate, sponsor, provide for and/or supplement present programs for the conduct of research investigations, experiments, and demonstrations,

in the exploration, extraction, processing, development, and production of minerals and the training of mineral engineers and scientists in the field of mining, minerals resources, and technology, and the establishment of an appropriate research and training center in various States; and

(m) wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

30 U.S.C. §1253:

Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as

provided in sections 521 and 523 and title IV of this Act [30 USCS §§1271, 1273 and 1231 et seq.], shall submit to the Secretary, by the end of the eighteenth-month period beginning on the date of enactment of this Act [enacted Aug. 3, 1977], a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through ---

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act,

including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act;

(4) a State law which provides for the effective implementations [implementation], maintenance, and enforcement of a permit system, meeting the requirements of this title for the regulations [regulation] of surface coal mining and reclamation operations for coal on lands with-

in the State;

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 [30 USCS §1272] provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State; and

(6) establishment for the purpose of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.

(b) Approval; prerequisites. The

Secretary shall not approve any State program submitted under this section until he has ---

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

(c) Notice of disapproval. If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program or portion thereof. The

Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) Inability of State to take action because of injunction. For the purposes of this section and section 504 [30 USCS §1254], the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under titles IV and VII of this Act [30 U.S.C.S §§1231 et se. 1251 et seq.] or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered

or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 502 of this Act [30 USCS §1252], until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of sections 503 and 504 [30 USCS §§1253, 1254] shall again be fully applicable.

30 U.S.C. §1255(a):

No state law or regulation in effect on the date of enactment of this Act [Aug. 3, 1977], or which may become effective thereafter, shall be superseded by any provision of this Act of any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

30 U.S.C. §1269(c)(3):

When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in section 515 (§1265), provided, however: that no bond shall be fully released until all reclamation requirements of this Act are fully met.

30 U.S.C. §1271(d):

As a condition of approval of any State program submitted pursuant to section 503 of this Act [30 USCS §1253], the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements rela-

ting thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.